

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

JEAN MARC VAN DEN HEUVEL,

No. 2:20-cv-00352-TLN-CKD PS

Plaintiff,

ORDER

v.

EDDIE FREAS et al.,  
Defendants.

Plaintiff is proceeding in this action pro se. The court previously granted plaintiff's request to proceed in forma pauperis and dismissed plaintiff's complaint with leave to amend. (ECF No. 4.) Plaintiff subsequently filed an amended complaint. (ECF No. 5.) Plaintiff has also filed a "Notice Re Forgery." (ECF No. 6.)

The federal in forma pauperis statute authorizes federal courts to dismiss a case if the action is legally "frivolous or malicious," fails to state a claim upon which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2).

A claim is legally frivolous when it lacks an arguable basis either in law or in fact. Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28 (9th Cir. 1984). The court may, therefore, dismiss a claim as frivolous where it is based on an indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke,

1 490 U.S. at 327.

2       In order to avoid dismissal for failure to state a claim a complaint must contain more than  
3 “naked assertions,” “labels and conclusions” or “a formulaic recitation of the elements of a cause  
4 of action.” Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555-557 (2007). In other words,  
5 “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory  
6 statements do not suffice.” Ashcroft v. Iqbal, 129 S. Ct. 1937, 1949 (2009). Furthermore, a claim  
7 upon which the court can grant relief has facial plausibility. Twombly, 550 U.S. at 570. “A  
8 claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw  
9 the reasonable inference that the defendant is liable for the misconduct alleged.” Iqbal, 129 S. Ct.  
10 at 1949. When considering whether a complaint states a claim upon which relief can be granted,  
11 the court must accept the allegations as true, Erickson v. Pardus, 127 S. Ct. 2197, 2200 (2007),  
12 and construe the complaint in the light most favorable to the plaintiff, see Scheuer v. Rhodes, 416  
13 U.S. 232, 236 (1974).

14       Here, plaintiff asserts that the court has federal question jurisdiction over his claims.  
15 Although not entirely clear, it appears that plaintiff’s complaint generally alleges that a bench  
16 warrant was issued in a proceeding in state court and was somehow mishandled. (ECF No. 5 at  
17 3). It appears that plaintiff is attempting to allege claims premised on 42 U.S.C. § 1983 for  
18 deprivation of his constitutional rights. However, plaintiff directs the court to no statute, treaty,  
19 or Constitutional provision that would vest this court with federal question jurisdiction. Plaintiff  
20 does not set forth what rights were violated or provide the court with a short plain statement as to  
21 how these rights were violated. To the extent that plaintiff cites the ADA, plaintiff does not  
22 provide any explanation of how any defendants’ action resulted in a violation of the ADA, or  
23 what portion of the ADA was violated.

24       The court finds the allegations in plaintiff’s complaint so vague and conclusory that it is  
25 unable to determine whether the current action is frivolous or fails to state a claim for relief. The  
26 court finds that the complaint does not contain a short and plain statement as required by Fed. R.  
27 Civ. P. 8(a)(2). Although the Federal Rules adopt a flexible pleading policy, a complaint must  
28 give fair notice and state the elements of the claim plainly and succinctly. Jones v. Community

1       Redev. Agency, 733 F.2d 646, 649 (9th Cir. 1984). Plaintiff must allege with at least some  
2 degree of particularity overt acts which defendants engaged in that support plaintiff's claim. Id.  
3 Because plaintiff has failed to comply with the requirements of Fed. R. Civ. P. 8(a)(2), the  
4 complaint must be dismissed. Although this is the second complaint plaintiff has filed, and the  
5 court has considered whether to recommend dismissal, the court grants plaintiff leave to file an  
6 amended complaint.

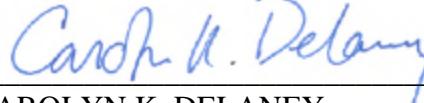
7           If plaintiff chooses to amend the complaint, plaintiff must set forth the jurisdictional  
8 grounds upon which the court's jurisdiction depends Fed. R. Civ. P. 8(a). Further, plaintiff must  
9 demonstrate how the conduct complained of has resulted in a deprivation of plaintiff's federal  
10 rights. See Ellis v. Cassidy, 625 F.2d 227 (9th Cir. 1980).

11          In addition, plaintiff is informed that the court cannot refer to a prior pleading in order to  
12 make plaintiff's amended complaint complete. Local Rule 220 requires that an amended  
13 complaint be complete in itself without reference to any prior pleading. This is because, as a  
14 general rule, an amended complaint supersedes the original complaint. See Loux v. Rhay, 375  
15 F.2d 55, 57 (9th Cir. 1967). Once plaintiff files an amended complaint, the original pleading no  
16 longer serves any function in the case. Therefore, in an amended complaint, as in an original  
17 complaint, each claim and the involvement of each defendant must be sufficiently alleged.

18           In accordance with the above, IT IS HEREBY ORDERED that:

19           1. Plaintiff's first amended complaint is dismissed; and  
20           2. Plaintiff is granted thirty days from the date this order to file an amended complaint  
21 that complies with the requirements of the Federal Rules of Civil Procedure, and the Local Rules  
22 of Practice; the amended complaint must bear the docket number assigned this case and must be  
23 labeled "Second Amended Complaint"; failure to file an amended complaint in accordance with  
24 this order will result in a recommendation that this action be dismissed.

25          Dated: May 13, 2020

  
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CAROLYN K. DELANEY  
UNITED STATES MAGISTRATE JUDGE